

Indiana Department of Education

Division of Exceptional Learners

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	1856.02
COMPLAINT INVESTIGATOR:	Steve Starbuck
DATE OF COMPLAINT:	January 18, 2002
DATE OF REPORT:	February 20, 2002
REQUEST FOR RECONSIDERATION:	yes/revised March 22, 2002
DATE OF CLOSURE:	April 22, 2002

COMPLAINT ISSUES:

Whether the Jay School Corporation violated:

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically, providing the student with chocolate milk and candy when the IEP indicates neither is to be provided.

511 IAC 7-27-3 by convening a case conference committee (CCC) meeting in the parent's absence, specifically, advising the parent that the CCC meeting scheduled for December 5, 2001, was cancelled and subsequently convening the CCC meeting without advising the parent.

511 IAC 7-27-2 and 511 IAC 7-27-3 by failing to notify the parent of a CCC meeting convened on March 6, 2001, and convening the CCC meeting in the parent's absence.

511 IAC 7-27-3(a)(3) by failing to include a general education teacher as a participant in the student's CCC meetings convened on February 21, March 6, and April 9, 2001.

During the course of the investigation, an additional issue was identified, which is:

511 IAC 7-24-1(b)(3) by failing to appoint an educational surrogate parent for a student who is a ward of the state, resides outside of the parent's home, and for whom a court order has not been written that expressly reserves to the parent the authority to make decisions regarding the student's education.

The Complaint Investigation Report was originally due on February 15, 2002; however, due to the need to obtain additional information from the school, an extension was approved by the director of the Division of Exceptional Learners on February 14, 2002, extending the deadline until February 22, 2002.

FINDINGS OF FACT:

1. The student is seven years old, attends the first grade, and has been determined eligible for special education under the following disability categories: emotional disability, other health impairment, and communication disorder.
2. The student has been a ward of the state since 1997. The student was determined eligible for special education on November 2, 2000. In May 2001 the student was removed from the care of her father and placed in foster care. The local juvenile court issued an order on April 26, 2001,

appointing the Student's guardian ad litem as "the Education Representative on behalf of Juvenile, and shall be notified of all school conferences, in leu [sic] of a designated Educational Surrogate Parent (ESP) to which the Jay School Corporation has consented at this hearing." The School provided the individual with training to serve as the educational surrogate parent and, although the School made no formal appointment of the guardian ad litem as the Student's educational surrogate parent, allowed him to serve in that capacity. Although the student remains a ward, she was returned to her father's home on January 10, 2002. The court order returning the Student to the parent's home did not restore the parent's educational decision making authority. However, the court verbally advised the superintendent on March 12, 2002, the parent could resume such decision making.

3. The father asserts that school personnel have been giving the student chocolate milk and candy, although the CCC Report dated September 7, 2001, indicates that the student should receive neither. The following information is recorded in the CCC Report dated September 7th:
 - a. "no/reduced (sugar) candy; monitor behavior after chocolate milk at lunch"; and
 - b. "Parents requested that [the student] not be given chocolate milk or candy."
 The director acknowledges that the student has been allowed to drink chocolate milk at school, but reports she was not aware of any occasion where the student was allowed to eat candy at school. The teacher of record (TOR) states the student has not been given candy at school, but acknowledges that the student has been given chocolate milk. The TOR states that while the student was placed outside of the father's home, she complied with the wishes of the student's guardian ad litem/educational surrogate parent who did not feel that it was detrimental to provide the student with chocolate milk. School personnel did not make any subsequent inquiry into father's request, nor was there any follow up to determine if candy or chocolate milk had a negative impact on the Student's behavior or educational performance.
4. A Case Conference Confirmation Notice confirms that a CCC meeting was scheduled for December 5, 2001. Discussion of the student's IEP is one of the reasons listed on the Confirmation Notice for convening the December 5th meeting. Both the biological parent and the educational surrogate parent were invited to participate. The father reports that school personnel called him a few hours before the meeting and informed him that the meeting had been cancelled. The director acknowledges that school personnel informed the parent that the CCC meeting was cancelled shortly before the meeting was to be convened and reports that the CCC meeting was cancelled "because the school felt the IEP goals continued to be appropriate." Subsequent to being informed that the meeting had been cancelled, the father contends that school personnel went ahead and convened the CCC meeting in his absence. The following information is listed on the Case Conference Notes dated December 5, 2001: "Staff feel that [the student] goals are still appropriate at this time. [The student] is still showing progress under current behavior program. Staff recommends that the annual case conference be delayed until after a court hearing can be held in January. Staff will send this addendum to [guardian ad litem's name] for approval." The December 5th Case Conference Notes reflect that decisions were made at this meeting regarding the student's IEP without the father's input. The guardian ad litem/educational surrogate parent was not present at this meeting, but subsequently signed the Case Conference Notes indicating his agreement with the School's recommendation.
5. The father contends that a CCC meeting was convened on March 6, 2001, for the biological mother, but that he was never informed of the meeting, and therefore, was not able to attend. The director acknowledges that a meeting took place with the biological mother on March 6th and that the father was not informed of the meeting. However, the director reports the meeting was not a CCC meeting, but only a meeting to share information with the biological mother concerning the student's educational record. At the time of this meeting, the Student was a ward of the local office of family

and children, was residing with her father, and no order had been issued restricting either parent's authority to make educational decisions. The results of this meeting are recorded on two pages entitled "Case Conference Notes, Observation, Behavior Plan, Other." This form is utilized by the planning district to record discussions and recommendations made at CCC meetings. The notes indicate that, as part of the meeting, the student's teacher of record reviewed parent rights with the mother. It is also recorded in the notes that the mother was given information about mediation and was encouraged by the director to request mediation if she continued to disagree with the student's placement. The notes reflect that the following persons were in attendance at the meeting: mother, maternal grandmother, principal, director, teacher of record, and Child Protective Services caseworker. It is reflected in the notes that school personnel discussed with the mother the student's progress and placement in school, and that the mother was asked to complete a developmental history form for the student.

6. The father states CCC meetings were convened on February 21, March 6, and April 9, 2001, without a general education teacher being present. The director acknowledges that CCC meetings were convened on February 21st and April 9th, but asserts that the March 6th meeting was not a CCC meeting. The student's IEP dated November 30, 2000, reflects that the student participated in the special education environment for the entire instructional day. The director reports the student's behavior at school had deteriorated during the second half of the 2000-2001 school year, and that it was not anticipated that the student would be participating in the general education environment when the CCC meetings mentioned above were convened.

CONCLUSIONS:

1. Finding of Fact #3 reflects that the parent made a request that the student not receive chocolate milk or candy at school, and that this request is documented in the CCC Report dated September 7, 2001. The director and TOR acknowledge that the student has been given chocolate milk at school. The TOR reports she allowed the student to have chocolate milk during the time the student resided outside of her father's home because the guardian ad litem did not see any reason to restrict the student's intake of this beverage. Finding of Fact #2 reflects that the school failed to appoint an educational surrogate parent for the student during the time period the student resided outside of the parent's home. During this period of time, the guardian ad litem did not have authority to make educational decisions on behalf of the student; the parent was without this authority as well. Therefore, no violation of 511 IAC 7-27-7(a) is found with respect to the continued provision of chocolate milk. However, because the parent had personal experience with and knowledge of the Student's disability, the School should have conducted further inquiry into whether consumption of those items resulted in a negative impact on the Student's behavior or educational performance.
2. Finding of Fact #4 indicates that school personnel informed the father that the December 5, 2001, CCC meeting had been cancelled. Case Conference Notes establish that a meeting was convened on December 5th in the absence of the father and the educational surrogate parent, at which School staff recommended no changes be made to the Student's IEP or behavior program. The School sought the educational surrogate parent's approval of its recommendations and refers to the Case Conference Notes as an "addendum" (presumably to the IEP), which support a conclusion that the December 5th meeting was a CCC meeting. Although the father did not have educational decision making authority at that time, he was originally invited to participate in the CCC meeting, and both he and the educational surrogate parent should have been included in the meeting that occurred on December 5. Therefore, a violation of 511 IAC 7-27-3 is found.
3. Finding of Fact #5 indicates that although the director contends that a CCC meeting was not convened on March 6, 2001, the appropriate participants were in attendance to conduct a CCC

meeting, issues involving parent rights, mediation, and the student's IEP were discussed, and the discussions at the meeting were documented on Case Conference Note forms. Due to this, it is determined that a CCC meeting was convened on March 6th, and that school personnel failed to notify the father of the meeting and consequently convened the CCC meeting in the father's absence. Therefore, violations of 511 IAC 7-27-2 and 511 IAC 7-27-3 are found.

4. Finding of Fact #6 establishes that CCC meetings were convened for the student from February through April 2001, and that during this time period, the student was not or would not be participating in the general education environment. Therefore, no general education teacher was required to attend the CCC meetings, and no violation of 511 IAC 7-27-3(a)(3) is found.
5. Finding of Fact #2 establishes that the school failed to formally appoint an educational surrogate parent for the student while she was a ward residing outside of her father's home. However, the School, in reliance on a court order appointing the guardian ad litem as the Student's educational representative, trained the court-appointed representative as an educational surrogate parent and treated him as such for educational decisions. Although a violation of 511 IAC 7-24-1(b)(3) occurred because of the School's failure to formally appoint the individual as the educational surrogate parent, the outcome is that a trained individual was making educational decisions for the Student. However, corrective action is needed to ensure that appointments are appropriately made in situations in the future.

The Department of Education, Division of Exceptional Learners, requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The Jay School Corporation shall:

1. Inservice all appropriate school personnel as to the requirements specified in 511 IAC 7-24-1(b)(3), 511 IAC 7-27-2 and 3, 511 IAC 7-27-7(a). Submit documentation to the Division that the inservice training has been completed no later than March 22, 2002. The documentation shall include a list or an agenda of all issues discussed, any handouts that were distributed, and a list of attendees by name and title.
2. Submit an assurance statement to the Division no later than March 22, 2002, that ensures:
 - a. compliance with the requirements for appointing an educational surrogate parent;
 - b. the parent is given adequate notice of a CCC meeting scheduled at a mutually agreed upon date, time, and place;
 - c. parents are permitted to participate in CCC meetings if they wish to attend the meetings; and
 - d. that the school will comply with parental dietary request that restricts a student's access certain foods and beverages.